IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

CRL.A.No. 576 of 2000()

CC.193/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, PERAMBRA
.....

APPELLANT:

JACOB GEORGE,
KERALA VYAPARI VYAVASAYI EKOPANA SAMITHI,
PANTHIRAKKARA UNIT,
AVADUKKA P.O.,
PERAMBRA.

BY ADV. SRI.P.V.KUNHIKRISHNAN
SMT.MARY ANNE JOSEPH

RESPONDENTS:

P.K.VALSAN, S/O.KUNHIRAMAN PATTANIPPARA,
ADAVUKKA P.O.,
PERAMBRA.

BY PUBLIC PROSECUTOR, SRI.AMJAD ALI
SRI.SUNNY MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.576/2000-A

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 8th day of October, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.193/1996 in the file of the Judicial Magistrate of the First Class-I, Perambra, with respect to the offence under Section 138 of the Negotiable Instruments Act on the allegation that the accused borrowed a sum of Rs.10,620/- from the complainant Samithi and issued the impugned cheque which when presented got dishonoured for want of funds in the account of the accused. The trial court dismissed the complaint and acquitted the accused on the ground that the complainant has no locus standi to file the complaint which is disputed herein.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P8.

3. The court below has found that PW.1, the complainant has proved the execution of the cheque and dishonour of the same for want of funds in the account of the accused from the evidence of PW.2 the Bank Manager and Exts.P1 to P8 that include the dishonour

memo and lawyer notice and postal receipt of sending of the lawyer notice and from the fact that no reply was received nor was the amount paid.

4. It is the case of the accused set up when PW.1 was examined that PW.1 was conducting a chitty and at the time of auctioning of the same he obtained a blank cheque leaf from the accused and that in fact he did not owe any money to PW.1. In Section 313 Cr.P.C statement the version of the accused is that he had issued the cheque to one Mohanan and not to PW.1. The court below has found that he has no consistent case and that the execution, dishonour and demand stands proved. Still the accused was acquitted on the ground that the complainant is not having the authority to file the complaint.

5. It is pointed out that as per Ext.P7, the bye-law of the Samithi vide clause 43, the General Secretary is empowered to initiate proceedings in the court etc. Ext.P8 is the minutes of the Samithi as per which PW.1 has been elected as the General Secretary. The court below have found that the above documents are hardly sufficient to establish the fact that the complainant is authorised to file the complaint. I find that the finding of the court below in this

regard cannot be upheld. It stands established from Exts.P7 and P8 documents that as per clause 43 of the bye-law, the Secretary is empowered to file the complaint and that PW.1 is the Secretary duly elected. I find that nothing more is required. In the circumstances, the finding of the court below is set aside. The accused/respondent is convicted for the offence under Section 138 of the N.I.Act and sentenced to undergo imprisonment till the rising of the court and to pay compensation of rupees fifteen thousand to the complainant and in default to undergo simple imprisonment for three months. The accused/respondent is granted three months time to remit the amount of compensation. He shall appear before the Judicial Magistrate of the First Class-I, Perambra, on 07/01/2008 to receive the sentence.

The criminal appeal is allowed as above.

K.R.UDAYABHANU,
Judge

ms

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.576/2000-A

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

J U D G M E N T

8th October, 2007